

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:19-cv-00260-MR**

**S. SHANE SMITH,**

**Plaintiff,**

**vs.**

**JUSTIN LYTLE,**

**Defendant.**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**ORDER**

**THIS MATTER** is before the Court on Plaintiff's letter requesting subpoena forms, which was docketed as a motion [Doc. 62], and Plaintiff's "Request for Subpoenas for Denies [*sic*] Bridges" [Doc. 65]. Plaintiff is proceeding in forma pauperis. [Docs. 2, 9].

The instant civil rights case is presently scheduled for a jury trial commencing on Tuesday, March 15, 2022 at 9:00 a.m. [See Doc. 67]. Plaintiff recently sent a letter to the Clerk of Court requesting two blank subpoena forms to subpoena witness to testify at trial. [Doc. 62]. Plaintiff is reminded, as provided in the Order of Instructions in this matter, that, "[l]etters sent to the Clerk of Court or Judge will not be answered." [Doc. 5 at ¶ 5]. "Only Motions will be ruled on by the Court." [Id.].

In any event, Plaintiff has since filed a request for the Court to issue a subpoena in this matter for the testimony and production of documents by Denise Bridges, identified as a Correctional Officer at Rutherford Correctional Center in Spindale, North Carolina, at the trial in this matter. [Doc. 65 at 1]. Officer Bridges was the officer who investigated the allegedly retaliatory disciplinary charge that was brought against Plaintiff after Plaintiff complained about Defendant Lytle's conduct. [See id. at 2]. Plaintiff, however, has failed to show that he can afford to pay the costs related to obtaining this witness at trial. See Fed. R. Civ. P. 45(b)(1) ("Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law.").

"A district court generally has no duty to subpoena witnesses for an indigent litigation who cannot pay the witness fees in civil, non-habeas cases. Nance v. King, 888 F.2d 1386, at \*1 (4th Cir. 1989) (table decision). See United States v. MacCollum, 426 U.S. 317, 321 (1976) ("expenditure of public funds [on behalf of an indigent litigant] is proper only when authorized by Congress"); Pickens v. Lewis, 2017 WL 2198342, at \*2 (W.D.N.C. May 18, 2017) (noting that 28 U.S.C. § 1915 does not authorize the payment of litigation expenses and "[o]rdinarily, the plaintiff must bear the costs of his

litigation ... even in *pro se* cases”). To be sure, 28 U.S.C. § 1915(d) provides that, despite a plaintiff’s *forma pauperis* status, “[w]itnesses shall attend as in other cases....”

The Court, therefore, will deny Plaintiff’s request for the Court to issue a subpoena of Denise Bridges without prejudice. The Plaintiff may renew his request with a tender of the witness and mileage fees,<sup>1</sup> if he so chooses.

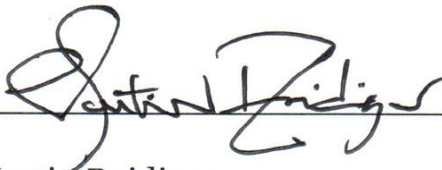
**ORDER**


**IT IS, THEREFORE, ORDERED** that Plaintiff’s motion [Doc. 65] is **DENIED without prejudice** in accordance with the terms of this Order.

The Clerk is respectfully instructed to terminate Docket No. 62 as a motion and update the docket to reflect this filing as a Letter only.

**IT IS SO ORDERED.**

Signed: February 4, 2022

  
\_\_\_\_\_  
Martin Reidinger  
Chief United States District Judge



---

<sup>1</sup> At minimum, the witness attendance fee is \$40.00, and mileage is paid at a rate of 58.5 cents per mile. 28 U.S.C. §§ 1821(b), (c)(1).